

1 **UNITED STATES DISTRICT COURT**

2 **DISTRICT OF NEVADA**

3 TOLAVIUS TIMMONS,

4 Plaintiff

5 v.

6 BONNIE POLLEY, et al.,

7 Defendants

Case No.: 2:17-cv-00361-APG-NJK

**Order Granting Defendants' Motion for
Summary Judgment**

[ECF No. 57]

8 Plaintiff Tolavius Timmons brings this pro se civil rights case under 42 U.S.C. § 1983
9 based on events he alleges occurred while he was a pretrial detainee at the Clark County
10 Detention Center (CCDC). After screening, my prior order dismissing certain defendants for
11 lack of service, and my prior order on summary judgment, Timmons' only remaining claims are
12 for RLUIPA violations based on denial of religious services and denial of religious books. ECF
13 No. 56. Defendants Las Vegas Metropolitan Police Department (LVMPD), Polley, Peralta,
14 Taylor, Cadet, Verduzco, and Sheriff Lombardo move for summary judgment on those
15 remaining claims because Timmons failed to exhaust his administrative remedies. They also
16 argue the RLUIPA claims fail on the merits because, among other reasons, Timmons has not
17 shown that LVMPD received federal funds. Timmons did not respond to the motion.

18 The parties are familiar with the facts, so I will not repeat them here except where
19 necessary to resolve the motion. I grant the defendants' motion because Timmons did not
20 exhaust his administrative remedies.

21 **I. ANALYSIS**

22 Summary judgment is appropriate if the movant shows "there is no genuine dispute as to
23 any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P.

1 56(a). A fact is material if it “might affect the outcome of the suit under the governing law.”
 2 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute is genuine if “the evidence
 3 is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.*

4 The party seeking summary judgment bears the initial burden of informing the court of
 5 the basis for its motion and identifying those portions of the record that demonstrate the absence
 6 of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The
 7 burden then shifts to the non-moving party to set forth specific facts demonstrating there is a
 8 genuine issue of material fact for trial. *Sonner v. Schwabe N. Am., Inc.*, 911 F.3d 989, 992 (9th
 9 Cir. 2018) (“To defeat summary judgment, the nonmoving party must produce evidence of a
 10 genuine dispute of material fact that could satisfy its burden at trial.”). I view the evidence and
 11 reasonable inferences in the light most favorable to the non-moving party. *Zetwick v. Cnty. of*
 12 *Yolo*, 850 F.3d 436, 440-41 (9th Cir. 2017).

13 Under the Prison Litigation Reform Act (PLRA), “[n]o action shall be brought with
 14 respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner
 15 confined in any jail, prison, or other correctional facility until such administrative remedies as
 16 are available are exhausted.” 42 U.S.C. § 1997e(a). Exhaustion of administrative remedies prior
 17 to filing a lawsuit is mandatory.¹ *Porter v. Nussle*, 534 U.S. 516, 524 (2002).

18 The PLRA requires “proper exhaustion” of an inmate’s claims. *Woodford v. Ngo*, 548
 19 U.S. 81, 90 (2006). That means the inmate must “use all steps the prison holds out, enabling the
 20 prison to reach the merits of the issue.” *Griffin v. Arpaio*, 557 F.3d 1117, 1119 (9th Cir. 2009).
 21 The inmate thus must comply “with an agency’s deadlines and other critical procedural rules
 22

23 ¹ Although Timmons is no longer incarcerated, he filed the suit while he was incarcerated, so he
 was required to exhaust. *Talamantes v. Leyva*, 575 F.3d 1021, 1024 (9th Cir. 2009).

1 because no adjudication system can function effectively without imposing some orderly structure
2 on the course of its proceedings.” *Woodford*, 548 U.S. at 90-91. But a prisoner exhausts his
3 administrative remedies “despite failing to comply with a procedural rule if prison officials
4 ignore the procedural problem and render a decision on the merits of the grievance at each
5 available step of the administrative process.” *Reyes v. Smith*, 810 F.3d 654, 658 (9th Cir. 2016).

6 Failure to exhaust is an affirmative defense. *Jones v. Bock*, 549 U.S. 199, 216 (2007).
7 Consequently, the defendants bear the burden of proving the inmate failed to exhaust an
8 available administrative remedy. *Albino v. Baca*, 747 F.3d 1162, 1172 (9th Cir. 2014) (en banc).
9 If the defendants do so, the burden shifts to the inmate to show “there is something in his
10 particular case that made the existing and generally available administrative remedies effectively
11 unavailable to him by showing that the local remedies were ineffective, unobtainable, unduly
12 prolonged, inadequate, or obviously futile.” *Williams v. Paramo*, 775 F.3d 1182, 1191 (9th Cir.
13 2015) (quotation omitted). The defendants bear the “ultimate burden” of proving a failure to
14 exhaust. *Id.*

15 Under CCDC’s grievance procedure, detainees are directed to speak first with their
16 housing unit officer. ECF No. 50-13 at 35. The detainee may then “address each level of [the]
17 chain of command, i.e., officer, sergeant, lieutenant, captain and deputy chief.” *Id.*

18 The defendants have presented evidence that Timmons did not exhaust his administrative
19 remedies with respect to these claims. *See* ECF No. 57-12. Because Timmons did not respond to
20 the motion, he has not pointed to evidence raising a genuine dispute. I therefore grant the
21 defendants’ motion.

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1 **II. CONCLUSION**

2 I THEREFORE ORDER that the defendants' motion for summary judgment (**ECF No.**
3 **57) is GRANTED.** The clerk of court is instructed to enter judgment in favor of defendants Las
4 Vegas Metropolitan Police Department, Polley, Peralta, Taylor, Cadet, Verduzco, and Sheriff
5 Lombardo and against plaintiff Tolavius Timmons and to close this case.

6 DATED this 7th day of January, 2021.

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ANDREW P. GORDON
9 UNITED STATES DISTRICT JUDGE
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